

AMENDED IN SENATE JUNE 21, 2012

AMENDED IN ASSEMBLY MAY 25, 2012

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1794**

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**Introduced by Assembly Member Williams**

February 21, 2012

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An act to amend Section 1088.5 of the Unemployment Insurance Code, relating to employers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1794, as amended, Williams. Unemployment insurance: use of employer reports: reporting and payroll: enforcement.

(1) Existing law provides for the payment of unemployment compensation benefits to eligible unemployed individuals, and requires the Employment Development Department to implement and administer the unemployment insurance system in the state. Existing law requires each employer to file with the department a report of wages paid to his or her workers and to furnish to each employee a written statement showing, among other things, the total amount of wages, and total wages subject to personal income tax, as provided. Existing law also requires each employer to file with the department specified information on new employees, and authorizes the use of that information for specified purposes including, among other things, administration of the law regarding unemployment compensation benefits. Existing law provides that a person who knowingly accesses, uses, or discloses confidential information without authorization is guilty of a misdemeanor.

This bill would, *until January 1, 2019*, also authorize the Employment Development Department to provide the specified new employee information to the Joint Enforcement Strike Force on the Underground Economy, the Contractors' State License Board, and the State Compensation Insurance Fund, as provided. By expanding the crime of knowingly and wrongfully accessing, using or disclosing specified information, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(2) Existing law imposes specified regulatory and enforcement responsibilities relating to employers on the Employment Development Department, the Contractors' State License Board, and the State Compensation Insurance Fund.

This bill would require the Employment Development Department, the Contractors' State License Board, and the State Compensation Insurance Fund to execute, on or before July 1, 2013, a memorandum of understanding regarding the administration and enforcement of reporting and payroll duties relating to contractors.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1088.5 of the Unemployment Insurance
- 2 Code is amended to read:
- 3 1088.5. (a) In addition to information reported in accordance
- 4 with Section 1088, effective July 1, 1998, each employer shall file,
- 5 with the department, the information provided for in subdivision
- 6 (b) on new employees.
- 7 (b) Each employer shall report the hiring of any employee who
- 8 works in this state and to whom the employer anticipates paying
- 9 wages.
- 10 (c) (1) This section shall not apply to any department, agency,
- 11 or instrumentality of the United States.
- 12 (2) State agency employers shall not be required to report
- 13 employees performing intelligence or counterintelligence functions,
- 14 if the head of the agency has determined that reporting pursuant

1 to this section would endanger the safety of the employee or  
2 compromise an ongoing investigation or intelligence mission.

3 (d) (1) Employers shall submit a report as described in  
4 paragraph (4) within 20 days of hiring any employee whom the  
5 employer is required to report pursuant to this section.

6 (2) Notwithstanding subdivision (a), employers transmitting  
7 reports magnetically or electronically shall submit the report by  
8 two monthly transmissions not less than 12 days and not more  
9 than 16 days apart.

10 (3) For purposes of this section, an employer that has employees  
11 in two or more states and that transmits reports magnetically or  
12 electronically may designate one state in which the employer has  
13 employees to which the employer will transmit the report described  
14 in paragraph (4). Any employer that transmits reports pursuant to  
15 this paragraph shall notify the Secretary of Health and Human  
16 Services in writing as to which state the employer designates for  
17 the purpose of sending reports.

18 (4) The report shall contain the following:

19 (A) The name, address, and social security number of the  
20 employees.

21 (B) The employer's name, address, state employer identification  
22 number (if one has been issued), and identifying number assigned  
23 to the employer under Section 6109 of the Internal Revenue Code  
24 of 1986.

25 (C) The first date the employee worked.

26 (5) Employers may report pursuant to this section by submitting  
27 a copy of the employee's W-4 form, a form provided by the  
28 department, or any other hiring document transmitted by first-class  
29 mail, magnetically, or electronically.

30 (e) For each failure to report the hiring of an employee, as  
31 required and within the time required by this section, unless the  
32 failure is due to good cause, the department may assess a penalty  
33 of twenty-four dollars (\$24), or four hundred ninety dollars (\$490)  
34 if the failure is the result of conspiracy between the employer and  
35 employee not to supply the required report or to supply a false or  
36 incomplete report.

37 (f) Information collected pursuant to this section may be used  
38 for the following purposes:

39 (1) Administration of this code, including ~~for the administrative~~  
40 ~~purposes of~~, *but not limited to, providing employer or employee*

1 *information to participating members of the Joint Enforcement*  
2 *Strike Force on the Underground Economy pursuant to Section*  
3 *329 for the purposes of auditing, investigating, and prosecuting*  
4 *violations of tax and cash-pay reporting laws.*

5 (2) Locating individuals for purposes of establishing paternity  
6 and establishing, modifying, and enforcing child support  
7 obligations.

8 (3) Administration of employment security and workers'  
9 compensation programs.

10 (4) Providing employer or employee information to the  
11 Franchise Tax Board and the State Board of Equalization for the  
12 purpose of tax or fee enforcement.

13 (5) Verification of eligibility of applicants for, or recipients of,  
14 the public assistance programs listed in Section 1320b-7(b) of Title  
15 42 of the United States Code.

16 (6) Providing employer or employee information to the  
17 Contractors' State License Board and the State Compensation  
18 Insurance Fund for the purpose of workers' compensation payroll  
19 reporting.

20 (g) For purposes of this section, "employer" includes a labor  
21 union hiring hall.

22 (h) This section shall become operative on July 1, 1998.

23 (i) *The amendments made to this section by the act adding this*  
24 *subdivision shall remain in effect only until January 1, 2019, and*  
25 *as of that date are repealed.*

26 SEC. 2. On or before July 1, 2013, the Employment  
27 Development Department, the Contractors' State License Board,  
28 and the State Compensation Insurance Fund shall execute a  
29 memorandum of understanding to share information and coordinate  
30 enforcement actions against contractors that fail to report new  
31 employees to the Employment Development Department and  
32 accurate payroll to the State Compensation Insurance Fund.

33 SEC. 3. No reimbursement is required by this act pursuant to  
34 Section 6 of Article XIII B of the California Constitution because  
35 the only costs that may be incurred by a local agency or school  
36 district will be incurred because this act creates a new crime or  
37 infraction, eliminates a crime or infraction, or changes the penalty  
38 for a crime or infraction, within the meaning of Section 17556 of  
39 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California  
2 Constitution.

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